

## REMARKS

The applicant requests reconsideration and further evaluation of the rejections presented in the 25 January 2008 Office Action.

Claims 1-67 appear in this submission for the Examiner's review. No new claims have been added.

Claims 1, 9-11, 14, 16-24, 27-42, 45, 50, 52-53, 57, 60 and 65-67 have been previously presented.

Claims 2-8, 12-13, 15, 25-26, 43-44, 46-49, 51, 54-56, 58-59 and 61-64 are original. No new matter has been added.

### Review of Present Application

Applicant acknowledges that prosecution of the application to date has not included much opportunity for a back-and-forth discussion with the Examiner, considering the Notices of Appeal, Supports of Pre-Appeal Brief Request for Review, Appeal Brief, etc. Therefore, to establish a ground for a continuing discussion with the Examiner, a review of the present application seems appropriate.

Each and every claim of the present application (claim 1 and its dependent claims 2-23, claim 24 and its dependent claims 25-41, claim 42 and its dependent claims 43-53 and claim 54 and its dependent claims 55-67) is, at the lowest common denominator, to a flexible, multilayer packaging film comprising four separate, distinct layers with distinct materials, features and characteristics:

- The first film layer comprises a first biaxially-oriented polymer, and the external surface of this layer comprises a surface-roughened portion.
- The second film layer comprises an adhesive and is positioned between the first film layer and the third film layer.
- The third film layer comprises a barrier material and is positioned between the second film layer and the fourth film layer.

- The fourth film layer comprises a second biaxially-oriented polymer, and the external surface of this layer comprises at least one score-line.

As previously explained in the applicant's 21 June 2006 Pre-Appeal Brief, in referring to film structure, a slash "/" is used to indicate that components to the left and the right of the slash are in different layers; the relative position of the layers is also indicated by use of the slash as an indicator of film layer boundaries. Therefore, in this instance, the claims of the present application describe the following general structure: biaxially-oriented polymer with surface-roughened portion / adhesive / barrier / biaxially-oriented polymer with score-line. This may also be depicted as follows (see also Figure 2 of the present application):

biaxially-oriented polymer with surface-roughened portion
adhesive
barrier
biaxially-oriented polymer with score-line

As depicted above and as described in each of claims 1-67 of the present application, a biaxially-oriented polymer with a surface-roughed portion is in one layer and a biaxially-oriented polymer with a score-line is in a *distinct, separate, other* layer of a flexible multilayer packaging film.

#### Review of the Cited Art

Paragraph 3 of the 25 January 2008 Office Action states that Claims 1-13 and 17-23 are rejected under 35 USC §103(a) as allegedly being unpatentable over Andersen et al. (US Patent 5,660,903) (Andersen) in view of Notomi et al. (US Patent 3,985,849) (Notomi). Paragraph 4 of the 25 January 2008 Office Action states that Claims 14-16 and 24-67 are rejected under 35 USC §103(a) as being unpatentable over Andersen in view of Notomi and further in view of Gehrke (US Patent 5783,266) (Gehrke) (with Gehrke apparently being relied upon solely for the disclosure regarding a metallic coating).

*Score Line and Surface Roughening of Andersen*

In Paragraph 3 of the 25 January 2008 Office Action, the Examiner states,

Andersen et al disclose a laminate . . . comprising a surface-roughened portion, therefore on an external surface or score lines for the purpose of bending the film; . . . the laminate therefore comprises a first film layer comprising a first polymer having a surface roughened portion on its external surface. . . and a fourth film layer having a second polymer.

As characterized by the Examiner, embodiments of Andersen may include four layers and one of the layers may include a score line and/or a surface-roughened portion. However, as quoted above, the Examiner makes no statement regarding a *distinct, separate, other* layer including a separate surface-roughened portion opposite a score line of a first layer and/or a separate score line opposite a surface-roughened portion of a first layer. (As quoted above, the Examiner simply states "a fourth film layer having a second polymer.") Furthermore, Andersen in itself does not disclose one layer having a score line and a *distinct, separate, other* layer having a surface-roughened portion.

In attempting to characterize Andersen as doing so, the Examiner is revisiting the errors of previous Office Actions and Advisory Actions. As review, as stated by the Examiner in the 8 June 2006 Advisory Action,

Applicant argues on page 16 [of applicant's Amendment under 37 CFR § 1.116 filed 22 May 2006], that Gehrke et al [US Patent 5,874,155] only disclose one layer with roughening, knurling, nicks or cuts. However, because Gehrke et al disclose a layer with roughening, knurling, nicks or cuts and disclose multilayer films comprising the layers, Gehrke et al disclose a multilayer film in which each layer has roughening, knurling, nicks or cuts.

As explained by the applicant in the 21 June 2006 Support of Pre-Appeal Brief Request for Review, Gehrke et al. disclose an outer film which is knurled, roughened, nicked or cut. But, in Gehrke et al., there is only one layer with surface roughening or cuts. Gehrke et al. do not disclose the separate elements of two separate layers, one layer with surface roughening and a *distinct, separate, other* layer with a score line. The distinction of Gehrke et al. from the claims of the present application was apparently recognized and accepted by the Examiner in the 10 August 2006 Panel Decision from Pre-Appeal Brief, as the Panel re-opened prosecution and withdrew the previous rejections (including the rejections based on

Gehrke et al.). The applicant respectfully requests that the Examiner once again recognize and accept the distinction between the structure of Andersen in which only one layer includes a score line and/or surface-roughened portion as opposed to the structure described in each and every claim of the present application in which one layer comprises a surface-roughened portion and a *distinct, separate, other* layer comprises a score line. This distinction was further explained in applicant's 9 October 2007 Appeal Brief. The substance of that explanation (for which the Examiner has yet to provide any acknowledgement of consideration) is repeated again here.

Andersen discloses that a sheet having a highly inorganically filled polymer matrix may be textured or roughened:

The finishing rollers can also impart a textured or roughened finish to the sheets. (Column 13 lines 36-37.)

In other embodiments, the finishing rollers can impart a desired texture such as a meshed or checkered surface. Instead of using a hard and a soft roller, rollers which can imprint the sheets with the desired finish may be used. If desired, the rollers can imprint the surface of the sheet with a logo or other design. Special rollers capable of imparting a water mark can be used alone or in conjunction with any of these other rollers. The extruder rollers, reduction rollers, or compaction rollers may contain means for producing a water mark by either producing a raised or depressed area within a sheet passing therethrough. (Column 54 line 66 – Column 55 line 9.)

Andersen also discloses that the sheet may also be scored:

The sheet can also be optionally scored, score cut, or perforated while in a slightly moistened or even in the dry condition in order to create a line within the structural matrix upon which the sheet can later be bent.

(Column 13 lines 40-43.) And Andersen discloses the possibility of the sheet being laminated to another sheet. (Claim 47, Column 81 lines 54-55.) During the 8 February 2007 interview, the Examiner commented that one sheet could be surface-roughened and one sheet could be scored. However, the applicant respectfully submits that this is a mischaracterization of Andersen, as, in Andersen, the scoring and the texturing / roughening are done to the *same* sheet. As stated in Column 13 line 40, "The sheet can also be optionally scored . . ." (Emphasis added.) Andersen makes no mention of one sheet having a score line laminated to a *distinct, separate, other* sheet having texturing or roughening. To characterize Andersen as such amounts to an impermissible and inaccurate "picking and

"choosing" of elements to somehow arrive at the claimed invention. As explained and illustrated by the Board in Ex parte Clapp.

Presuming arguendo that the references show the elements or concepts urged by the examiner, the examiner has presented no line of reasoning, and we know of none, as to why the artisan viewing only the collective teachings of the references would have found it obvious to *selectively pick and choose various elements and/or concepts* from the several references relied on to arrive at the claimed invention. In the instant application, the examiner has done little more than cite references to show that one or more elements or subcombinations thereof, when each is viewed in a vacuum, is known. . . . To support the conclusion that the claimed combination is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed combination or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references. We find nothing in the references that would expressly or impliedly teach or suggest the modifications urged by the examiner. Additionally, as aforementioned, we find no line of reasoning in the answer, and we know of none, as to why the artisan would have found the modifications urged by the examiner to have been obvious. Based upon the record before us, we are convinced that *the artisan would not have found it obvious to selectively pick and choose elements or concepts* from the various references so as to arrive at the claimed invention without using the claims as a guide.

(Emphasis added, Ex parte Clapp, 227 USPQ 972, 973 (Bd. Pat. App. & Int. 1985)).

Andersen does not disclose and does not even intimate a flexible multilayer packaging film with a first film layer having a surface-roughened portion on an external surface and a *distinct, separate, other* film layer having a score line on an external surface. And the Examiner has provided no convincing line of reasoning for such. As a result, the cited art does not teach or suggest all the claim limitations of each and every claim of the present application; and the claims of the present application are patentable.

#### *Andersen In View Of Notomi*

As noted by the Examiner at Page 3 of the 25 January 2008 Office Action, Andersen may comprise polyvinyl alcohol and Andersen fails to disclose a polymer that is biaxially-oriented. The Examiner further notes that Notomi discloses the biaxial orientation of a sheet of polyvinyl alcohol. The Examiner then confusingly states,

It therefore would have been obvious for one of ordinary skill in the art to have provided for the biaxial orientation of the sheet of Notomi et al in order to obtain a film having improved impact resistance as taught by Notomi et al.

(25 January 2008 Office Action, Page 3.) The applicant respectfully requests clarification of this confusing statement regarding Notomi.

"Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), quoted with approval in *KSR International Co. v. Teleflex, Inc.*, 82 USPQ2d 1385, 1396 (2007). Considering the confusing statement quoted above, the Examiner has neither articulated any reasoning nor even provided a conclusory statement regarding the claim limitation of a biaxially-oriented polymer, as included in each and every claim of the present application. As a result, the cited art does not teach or suggest all the claim limitations of each and every claim of the present application; and the claims of the present application are patentable.

#### Conclusion

In view of the above remarks (and applicant's previous arguments in the 20 February 2007 Support of Pre-Appeal Brief Request for Review and the 9 October 2007 Appeal Brief, which are reiterated and incorporated herein by reference), the applicant submits that the claims are patentable and in condition for allowance. The cited art fails to teach or suggest – and the Examiner has failed to provide a convincing line of reasoning for – either the combination of one layer with a score line and a *distinct, separate, other* layer with a surface-roughened portion or the presence of a biaxially-oriented polymer, as both are illustrated in the following depiction and as both are required in each and every claim of the present application.

biaxially-oriented polymer with surface-roughened portion
adhesive
barrier
biaxially-oriented polymer with score-line

Therefore, the applicant respectfully requests that the Examiner withdraw the rejections and allow each of claims 1 - 67.

If a telephone conference would expedite allowance of the claims, the Examiner may contact the applicant via applicant's attorney at (920) 303-7970.

Respectfully submitted,

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